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DEPARTMENT OF PUBLIC WORKS

The Minister of Public Works, Ms. Stella N Sigcau, MP, hereby publishes the draft State Property Management Company Bill, which Bill establishes a public company which will provide accommodation to clients and be responsible for the strategic and operational management of the fixed asset portfolio of the State.

Written comments and inputs are invited from interested parties and the general public, which must be submitted to:

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**THE CLOSING DATE FOR COMMENTS IS 15 MARCH 2002**

## BILL

To make provision for a company, which will be responsible for the strategic and operational management of the fixed asset portfolio of the State to derive benefits for the State from its property portfolio and for that purpose to provide for the establishment of the State Property Management Company, a public company wholly owned by the State; to provide for the governance and management of that company; to define the objects, powers, duties and operational and financial accountability of that company; to provide for the establishment of a regulator to oversee the exercise of its powers and duties by the State Property Management Company; and to provide for matters incidental thereto.

*(Introduced by the Minister of Public Works)*

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**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:-

#### *Chapter 1* *Interpretation*

##### **Definitions**

1. In this Act, unless the context otherwise indicates –

“articles” means the articles of association of the Company;

“Board” means the Board of Directors of the Company;

“chairperson” means the chairperson of the Board;

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);

“Company” means the State Property Management Company established by section 2;

“Department” means the national department responsible for public works;

“director” means a director of the Board;

“fixed asset” means all immovable property within or outside the borders of the Republic, whether owned or leased by the State and includes the improvements thereon and rights therein;

“fixed asset portfolio of the State” means the total of the fixed assets of which-

- (a) the State is the owner; and
- (b) the management resided or should have resided within the functional area of the Department before the date of commencement of this Act; or
- (c) ownership is acquired by the State after the date of commencement of this Act on advice of and managed by the Company;

“manage”, when used in relation to the assets or fixed asset portfolio of the State, includes-

- (a) project management;
- (b) property management;
- (c) investment analysis;
- (d) facilities management;

- (e) maintenance management;
- (f) strategic management; and
- (g) contract management;

“chief executive officer” means the chief executive officer of the Company;

“memorandum” means the memorandum of association of the Company;

“Minister” means the Minister responsible for public works;

“operational assets” means the movable assets needed by the Company to conduct business;

“prescribe” means prescribe by regulation;

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“Registrar” means the Registrar of Companies referred to in section 7 of the Companies Act;

“regulation” means a regulation made under this Act;

“this Act” includes the regulations.

## *Chapter II* *Company*

### **Establishment of Company**

2. There is hereby established a corporate body to be known as the State Property Management Company.

### **Incorporation of public company**

3. (1) The Minister must effect the incorporation in terms of the Companies Act of a public company, namely the 'State Property Management Company', and the issue to the Company of a certificate to commence business.

(2) Notwithstanding the provisions of the Companies Act, the Minister must sign the memorandum of association and articles of association of the proposed company on behalf of the State.

(3) Notwithstanding the provisions of the Companies Act, the Company has at incorporation not more than one member.

(4) The Minister must take up shares in the Company so incorporated on behalf of the State, and then exercise the State's rights as member and shareholder of the Company.

(5) Subject to section 8, the shares contemplated in subsection (4), may only be sold or otherwise disposed of with the approval, by resolution, of Parliament.

- (6) (a) No stamp duties in terms of the Stamp Duties Act, 1968 (Act No.77 of 1968), is payable in respect of the issue of shares mentioned in subsection (4);
- (b) No fee as contemplated in section 63 of the Companies Act or any other fee is payable to the Registrar in respect of the incorporation and the issue of a certificate to commence business in terms of subsection (1).

#### **Application of Companies Act**

4. (1) The Companies Act applies to the Company subject to the provisions of this Act.

(2) Sections 66, 190 and 344(d) of the Companies Act do not, while the State is a member of the Company and the total number of members of the Company is less than seven, apply to the Company.

(3) The Minister may, by notice in the *Gazette*, exempt the Company from the application of any other provision of the Companies Act or render such provision applicable, subject to such modification as the Minister considers necessary, and the Minister may withdraw or amend such notice.

(4) The Registrar may issue such directives and authorise such exemptions from or modifications to the regulations made under the Companies Act, as the Registrar considers necessary, in respect of the Company in order to give effect to the provisions of this Act.

#### **Objects of Company**

5. (1) The objects of the Company are to provide accommodation to its clients and to manage the fixed assets efficiently and cost effectively to ensure optimum functional, social and financial returns for the State.

(2) The Company may, under section 55 of the Companies Act, make additions to or alter the provisions of its memorandum with regard to the objects and powers of the Company, subject thereto that -

- (a) the objects mentioned in subsection (1) may not be altered; and
- (b) for this purpose, the references to the Company and the members in sections 55 and 199 to 204 of the Companies Act, are deemed to be references to the Cabinet.

#### **Powers and duties of Company**

6. (1) Subject to subsection (2), the Company-

- (a) must manage fixed assets on behalf of the Department;
- (b) must verify and consolidate the accommodation needs of any national government department or other organ of state referred to in section 18;

- (c) must determine whether there are any assets of which the State is the owner available to fulfil the accommodation needs of the national government department or other organ of state concerned before assets, of which a person other than the State is the owner, are acquired, leased or developed;
- (d) must implement, monitor and amend the national asset management plan developed by the Minister and approved by the Minister of Finance and the Minister of Public Service and Administration;
- (e) must advise the Minister with regard to-
  - (i) the acquisition, by means of expropriation, of fixed assets;
  - (ii) the disposal of fixed assets superfluous to the needs of the State;
- (f) may request the Land Affairs Board established under section 2 of the Land Affairs Act, 1987 (Act No. 101 of 1987) to make a determination or advise it on the matters referred to in section 6 of that Act;
- (g) may investigate or initiate investigations into matters pertaining to its functions and policies, and, if necessary, request the Minister to amend the appropriate legislation in this regard;
- (h) may make recommendations to the Minister on any matter relating to the fixed asset portfolio of the State or the object, powers or duties of the Company and request his or her intervention, if necessary;
- (i) may advise the Minister, Minister of Finance and the Minister of Public Service Administration on matters of national importance where the needs of the State, as communicated to the Company, require the Ministers referred to above to take the appropriate action;
- (j) may assist any organ of state with the development and updating of its asset management plan;
- (k) may only exercise the power referred to in item (a) of Schedule 2 of the Companies Act with regard to the purchase or acquisition of stock-in-trade, land, buildings, shares and debentures and any other description of immovable property in relation to –
  - (a) its subsidiary company;
  - (b) other public entities listed in terms of the Public Finance Management Act;
  - (c) an entity owned by another public entity listed in terms of the Public Finance Management Act; or
  - (d) any other entity approved by the Minister in consultation with the Minister of Finance;

- (l) may not amalgamate with any other company, notwithstanding item (l) of Schedule 2 of the Companies Act authorising such amalgamation;
- (m) may only allot shares to the Minister as contemplated in this Act notwithstanding the authorisation to allot shares by item (n) of Schedule 2 of the Companies Act;
- (n) may generally do all such things as the Company considers necessary or expedient to achieve the objectives of this Act.

(2) The powers set out in subsection (1) are in addition and supplementary to the powers set out in Schedule 2 of the Companies Act except in so far as a power set out in the said Schedule 2 is qualified or limited in subsection (1), the other provisions of this Act or the Public Finance Management Act, in which case such qualification or limitation must be adhered to by the Company.

### **Rules of Company**

7. Subject to this Act, the memorandum and articles, the Board may, on behalf of the Company, make rules regarding -

- (a) its policy with regard to the management and development of state property;
- (b) personnel matters, including disciplinary procedures, and other administrative and procedural matters of the Company;
- (c) such other matters as provided for in this Act or as are necessary or useful for the achievement of the objects of the Company and to regulate the business and affairs of the Board and the Company.

### **Shareholding**

8. Despite the provisions of the Companies Act, the Company may only issue shares to an organ of state, with the approval, by resolution, of Parliament and subject to the condition that the Minister remains the majority shareholder of the Company at all times.

## *Chapter III* *Management of Company*

### **Board of Directors**

9. (1) Subject to the overall authority of the shareholder of the Company as provided for in this Act, the Companies Act and the articles, the Board determines and controls the business strategy of the Company and directs the operations of the Company.

(2) The Board consists of between seven and 13 directors, and is constituted as follows:

- (a) a non-executive chairperson;

(b) executive directors-

(i) who must constitute the minority of the Board; and

(ii) of whom one is appointed as chief executive officer in terms of section 13(2);

(c) non-executive directors-

(i) who, together with the chairperson, must constitute the majority of the Board and include representatives of two government departments that have an interest in the management of the fixed asset portfolio of the State; and

(ii) the majority of which may not be officers as defined in section 1 of the Public Service Act, 1994 (Proclamation 103 of 1994), or deemed to be such officers in terms of section 1 of the Public Service Amendment Act, 1996 (Act No.13 of 1996).

(3) Subject to section 13(2), the Minister, taking into account, among other things, the principles of transparency and representivity, appoints the executive directors from among persons who have shown ability in and experience with financial, legal, commercial, property management, administrative or industrial matters.

(4) An officer or employee of the staff of the Company may be appointed as a director.

#### **Term of office and remuneration of directors**

10. (1) A non-executive director is appointed by the Minister for a term not exceeding three years and may-

(a) only be removed from office -

(i) if the director becomes subject to a disqualification mentioned in section 11;

(ii) for misconduct;

(iii) for incompetence; or

(b) resign from office by submitting to the Minister a letter of resignation 60 days before the vacating of his or her office.

(2) An executive director, other than the chief executive officer, is appointed in accordance with terms and conditions of a contract of service and the term of office and termination of his or her term of office is as stipulated in that contract of service.

(3) A director is eligible for reappointment after the expiration of term of office.

(4) The Minister, in consultation with the Minister of Finance, determines the remuneration and benefits, including reimbursements of expenses in connection with travel and subsistence of a director, and different determinations may be made for the chief executive officer, an executive director other than the chief executive officer, a non-executive director and a director who holds a post or office in any organ of state.

### **Disqualifications of directors**

11. A person may not be appointed as a director if such person -
- (a) is disqualified from being appointed or acting as a director of a company in terms of the Companies Act;
  - (b) is a member of Parliament or a provincial Legislature ;
  - (c) has a financial or other interest likely to prejudicially affect his or her performance of duties as director of the Company.

### **Validity of decisions**

12. A decision taken by the Board or an act performed under the authority of the Board is not invalid by reason only of a vacancy on the Board, or of the fact that a person who is not entitled to sit as a director sat as a director at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of directors who were present at the time and entitled to sit.

### **Chief executive officer and staff**

13. (1) The chief executive officer is, for the purposes of the Companies Act, 1973, the managing director of the Company and has, on behalf of the Board, the direction and management of the business and affairs of the Company with authority to act in all matters that are not by this Act or the articles specifically reserved to be done by the Board.

(2) The Minister may appoint an acting chief executive officer to the Board until such time as the Board, in consultation with the Minister, appoints a chief executive officer,

(3) The chief executive officer appointed by the Board is, by virtue of holding that office, an executive director of the Board.

(4) The chief executive officer may be reappointed at the expiry of his or her term of office.

(5) The term of office, conditions of service and termination of service of the chief executive officer must be determined in the contract of service concluded between the Board and the chief executive officer.

(6) The chief executive officer and other executive directors must enter into a performance agreement with the Board on acceptance of their appointment.

(7) If, for any reason, the chief executive officer is unable to act for a period longer than two months, the Board may appoint an acting chief executive officer to act as the chief executive officer for the duration of such inability or three months, whichever period is the shortest, and the person so appointed has, while so acting, all the powers and carries out all the duties of the chief executive officer.

(8) The Company may employ such officers and employees, and may engage such agents, advisers and consultants, as it considers necessary to carry out the purpose of this Act and for the proper conduct of its business and the Company may fix the terms and conditions of their employment or engagement.

#### *Chapter IV* *Financial Management*

#### **Funds**

14. The funds of the Company consist of –
- (a) user charges levied to clients by the Company;
  - (b) money appropriated by Parliament for the purpose of managing the relevant assets in the fixed asset portfolio of the State;
  - (c) money received as a grant or donation from any person or institution;
  - (d) excess funds retained by the Company in accordance with a strategic plan submitted by the Company to and approved by the Minister permitting the percentage of excess funds, which may be so retained, and the purposes for which the excess funds may be utilised;
  - (e) money received from interest on any investment.

#### **Accounts, audit and annual report**

15. (1) The accounting, auditing and reporting procedures of the Company are as prescribed by the Companies Act unless the Public Finance Management Act requires different procedures, in which case the latter Act enjoys preference.

(2) If the Public Finance Management Act enjoys preference as contemplated in subsection (1), the Company may, with the concurrence of the Minister, request the Minister of Finance to exempt it, in terms of section 92 of that Act, from the provision concerned on the condition that the Company follows the procedures prescribed by the similar provision in the Companies Act.

#### **Fees, rentals and prices**

16. The Company must determine market related fees for services rendered to its clients and determine the rental amount or prices for state owned assets or negotiate the rental amount or prices in relation to assets on behalf of clients, taking cognisance of prevalent market prices.

### **Asset management plan**

17. (1) A national government department must develop its asset management plan in consultation with the Company.
- (2) An asset management plan must contain the prescribed minimum content.

### **Company to provide accommodation**

18. (1) For the period determined by the Minister by notice in the *Gazette*, any national government department must approach the Company to provide the necessary accommodation and the Company will supply or enter into any negotiations on its behalf to obtain satisfactory accommodation.

(2) Any other organ of state, which needs accommodation, may approach the Company to provide accommodation to it under the conditions contemplated in subsection (1).

(3) The Company and the client concerned must enter into a service agreement to determine the terms and conditions for the rendering of the services by the Company and the parties must agree on alternative dispute resolution measures.

### **Delegation**

19. (1) Subject to the Companies Act and the articles, the shareholder of the Company may delegate to the Board any power, except the power to -

- (a) appoint directors, excluding subsequent chief executive officers contemplated in section 13(2); and
- (b) approve the raising of loans or borrowing of money exceeding the prescribed limitations.

(2) Subject to the Companies Act and the articles, the Board may delegate any power, except the power to make rules and appoint the chief executive officer, conferred upon it by this Act to any director of the Board or the chief executive officer or any employee of the Company.

(3) The chief executive officer may delegate any power conferred upon him or her under this Act or delegated to him or her under subsection (2), to any employee of the Company.

(4) A power delegated under this section must be exercised subject to the direction of the shareholder of the Company, the Board or the chief executive officer, as the case may be, and the shareholder, Board and chief executive officer are not divested of such delegated power and may -

(a) amend or set aside anything done in the exercise of such power; and

(b) at any time withdraw such delegation.

(5) Nothing in this section prevents the shareholder of the Company, the Board or the chief executive officer, as the case may be, from exercising a delegated power under this section.

### **Winding up of Company**

20. The Company may not be wound up except in accordance with an Act of Parliament.

### **Restriction of name of Company**

21. (1) A person may not under a name containing the words "State Property Management Company" or an abbreviation thereof -

(a) conduct his or her business or carry on any occupation or trade;

(b) be registered or licensed in terms of any legislation; or

(b) falsely claim to be acting on behalf of the Company.

(2) Any person who contravenes this section is guilty of an offence and liable on conviction to a fine or to imprisonment for a term not exceeding two years, or to both.

### **Regulations**

22. The Minister may, after consultation with the Board, make regulations as to -

(a) the election, appointment, filling of vacancies and vacation of office of directors of the Board;

(b) the receiving grants and donations, issuing of debentures or debenture stock or raising wholesale loans;

(c) the contents of an asset management plan and the national asset management plan and matters related thereto;

(d) any matter which may be prescribed under this Act; and

(e) such other matters as are necessary or useful to be prescribed for the achievements of the objects of this Act.

### *Chapter VI*

### *Transitional Provisions, Repeal of Laws and Commencement*

## **Transfer of seed funding and operational assets**

23. (1) The Minister must, on the commencement of this Act, transfer the operational assets, liabilities, rights and obligations, of which the Department is the owner or holder of or responsible for, needed by the Company to commence business and agreed to by Cabinet, on such conditions as the Minister may determine, to the Company.

(2) The Minister may, in consultation with the Minister of Finance, transfer to the Company seed funding for the purpose of establishing it as an operational concern.

(3) The Minister may after consultation with the Company and subject to the consent of the creditor concerned and such conditions as the Minister and the creditor may agree on, assign to the Company any obligation of the Department arising out of an existing agreement between the Department and that creditor in connection with any debt incurred by the Department in connection with the property to be managed by the Company.

(4) Notwithstanding any law to the contrary, the Company is, with effect from the date of transfer, vested with the ownership of the operational assets and rights and charged with the liabilities and obligations transferred or assigned to it under subsections (1) and (2).

(5) A certificate issued by the Minister stating that any lease or any other operational asset or right described in such certificate has been transferred to the Company in terms of subsection (1), is sufficient proof that the operational asset or right so described vests in the Company.

(6) On the submission of the certificate contemplated in subsection (5) to any person in charge of any office where a register or a record is being kept of the ownership of or entitlement to an asset or right described in such certificate, that person must make such entries in or on any relevant register, or other document in his or her office or submitted to him or her as may be necessary to effect the transfer in the name of the Company.

(7) The Company is substituted for the Department as a contracting party in respect of any agreement transferred to the Company in terms of subsection (1) without that substitution bringing about a novation of that agreement.

(8) The Minister, in consultation with the Minister of Finance, determines the value of operational assets and liabilities transferred to the Company in terms of subsection (1).

(9) On the transfer of the operational assets and the determination of the value thereof in terms of subsection (8), the Company must issue to the Minister fully paid up shares to the value determined in terms of that subsection.

(10) Notwithstanding any law to the contrary, no stamp duties, transfer duties, registration fees, sales tax, additional sales levy, value added tax or any other duty, fee, tax or levy payable in terms of any law for the acquisition or transfer of operational assets or rights is payable in respect of the transfer of the operational assets or rights by the Minister to the Company in terms of subsection (1).

## **Transfer of personnel**

24. (1) The Minister may, subject to the provisions of the Public Service Act, 1994 (Proclamation No.104 of 1994), make the services of any person who is an officer or employee of the Department in terms of that Act, available to the Company.

(2) The Minister and the Company must determine the terms and conditions, including remuneration and benefits, of an appointment of an officer or employee as contemplated in subsection (1), but that officer or employee may not be appointed on terms and conditions, including remuneration and benefits, that are less favourable than he or she is entitled to as an officer or employee of the Department.

(3) An officer or employee as contemplated in subsection (2) who is a member of the Government Employees Pension Fund or the Temporary Employees Pension Fund administered by the National Treasury and who is employed by the Company, must before a date determined by the Minister, after consultation with the Company and in accordance with an agreement between the Minister and the Company regarding the transfer of personnel and their benefits, exercise an option to-

- (a) remain a member of that fund and to continue contributing to that fund;
- (b) remain a member of that fund, and from the date of exercising such an option that officer or employee must, notwithstanding the provisions of any other law, be deemed to be a dormant member of the fund concerned as contemplated in section 15 of the General Pensions Act, 1979 (Act No.29 of 1979), and become a member of a pension fund established by the Company as contemplated in paragraph (c); or
- (c) become a member of a pension fund established by the Company under the Pension Funds Act, 1956 (Act No.24 of 1956), if any.

(4) The Minister may delegate, on the conditions he or she considers necessary, to an officer of the Department, a power granted to him or her by this section.

## **Amendment of laws**

25. This Act amends the laws specified in the Schedule to this Act to the extent set out in the third column thereof.

## **Short title and commencement**

26. (1) This Act is called the State Property Management Company Act, 2002, and comes into operation on a date determined by the Minister by notice in the Gazette.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Any reference in any provision of this Act to the commencement of this Act is construed as a reference to the date determined under subsection (2) in relation to such provision.

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| Column 1            | Column 2                | Column 3   |
|---------------------|-------------------------|--|
| No. and year of law | Title                   | Extent of repeal or amendment  |
| Act No. 48 of 1961  | State Land Disposal Act | <p>Amendment of section 7 by-</p> <p>(a) the substitution for the of the full stop after paragraph (b) of subsection (1) for the following: “; and”; and</p> <p>(b) the insertion of the following paragraph after paragraph (b):</p> <p>“(c) any power or duty conferred on him or her in terms of this Act, to the State Property Management Company established by section 2 of the State Property Management Company Act, 2002 (Act No... of 2002).”.</p>  |
| Act No. 101 of 1987 | Land Affairs Act        | <p>Amendment of section 6 by the substitution of subsection (1) for the following subsection:</p> <p>“(1) Subject to the directions of the Minister, the board shall determine the amounts of compensation, purchase prices or rents payable in respect of immovable property which is, for public purposes, expropriated or purchased by the Department or leased by the State Property Management Company established by section 2 of the State Property Management Company Act, 2002 (Act No... of 2002), out of moneys appropriated by Parliament for that purpose: Provided that the Minister may in certain cases assign the power of decision regarding the determination of such rents to the State Property Management Company.”.</p> |